

## REMARKS

The pending Office Action addresses claims 1-51. Claims 4, 5, 8, 11-15, 20-24, 30, 31, and 34-51 are withdrawn from consideration. Remaining claims 1-3, 6, 7, 9, 10, 16-19, 25, 27-29, 32, and 33 stand rejected. New claims 52-62 are added.

### *Claim Amendments*

Claim 1 is amended to include the limitations of claims 2 and 6, and claim 28 is amended to include the limitations of claims 29 and 32. Claims 2, 6, 29 and 32 are canceled. Claims 3, 7, 25, 33, and 34 are amended to correspond to amended claims 1 and 28. No new matter is added.

Applicants also cancel claims 2, 4, 5, 8-10, 13-15, 20-24, 30, 31, and 34-51. Applicants reserve the right to pursue these claims in a divisional application.

Claims 52-62 are added. Claim 52 is similar to claim 7, written in independent format, and claims 53-62 depend from new claim 52. Claim 53 recites that at least one alignment tab comprises first and second alignment tabs extending distally from opposed outer edges of opposed ends of the guide member, a limitation from claim 1, and claims 54-62 mirror dependent claims 3, 9, 10, 16-19, 25, and 27, and thus do not represent new matter.

### *Rejections Pursuant to 35 U.S.C. §102*

Claims 1-3, 16-19, 25, 27, 28-29, and 33 are rejected pursuant to 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,379,364 of Brace. As indicated above, claim 1 is amended to include the limitations of claims 2 and 6, and claim 28 is amended to include the limitations of claims 29 and 32, thereby obviating the basis for this rejection.

### *Rejections Pursuant to 35 U.S.C. §103*

(1) *U.S. Patent No. 6,379,364 of Brace*

Claim 10 is rejected pursuant to 35 U.S.C. §103(a) as being obvious over Brace. As discussed

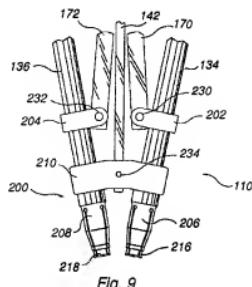
above, independent claim 1 distinguishes over Brace. Thus, claim 10 is allowable at least because it depends from allowable claim 1.

*(2) Brace in view of U.S. Patent No. 5,676,666 of Oxland*

Claims 6 and 32 are rejected pursuant to 35 U.S.C. §103(a) as being obvious over Brace in view of U.S. Patent No. 5,676,666 of Oxland. The features of claims 6 and 32 have been added to claims 1 and 28 respectively, which distinguish over Brace and Oxland.

The Examiner argues that Brace discloses a guide device as claimed, but admits that Brace fails to teach a guide device having alignment tabs that extend from opposed outer edges such that first and second lumens in the guide device are positioned between the protruding alignment tabs. Thus, the Examiner relies on Oxland to disclose a device with tabs that protrude from outer opposing sides of the lumens, arguing that it would have been obvious to one having ordinary skill in the art to construct the device of Brace with tabs on opposed outer side of the guide device “to better align the device in use on a spinal plate.” Applicants respectfully disagree.

A person having ordinary skill in the art would have no motivation to modify Brace to include opposed alignment tabs as taught by Oxland and as suggested by the Examiner. Brace discloses a drill guide assembly having an alignment device disposed on one end of the assembly. As shown in FIG. 9 of Brace, which is reproduced herein, the alignment device includes first and second drill tubes (134, 136) having bushings (206, 208) disposed on the ends thereof. Each bushing (206, 208) is configured to extend through a fastener hole in a bone plate to align the drill tubes (134, 136) with the holes in the plates (See Col. 9, lines 9-12). In particular, the bushings are specifically configured to expand to engage the fastener holes in the plate, thereby allowing the plate to be held and manipulated by the drill guide assembly. Since Brace specifically discloses drill guide tubes that extend into and engage fastener holes in a bone plate, there is no need to provide opposed alignment tabs, as taught by Oxland.



The alignment tabs disclosed by Oxland are necessary because the guide cylinders (80, 82) do not extend into the holes in a cervical plate (12). Brace is not confronted with this issue. The strongest rational for combining references is a recognition that some advantage of expected beneficial result would be produced by the combination. (See MPEP 2144). There is no advantage to adding alignment tabs to the Brace device since Brace already discloses a technique for aligning the tubes with holes in a bone plate. In fact, the tubes of Brace will likely provide a more secure connection than the use of alignment tabs, as the tubes are configured to expand and positively engage the plate.

Applicants further note that it would not be possible to use alignment tabs on the device of Brace, at least not without significantly modifying the device. The tubes of Brace engage the bone holes in a plate, and the remainder of the device is spaced a distance apart from the plate. There is no location on the device for alignment tabs that could engage the plate to align the device with the plate.

Accordingly, it would not have been obvious to a person of ordinary skill in the art to modify Brace in view of Oxland, and therefore claims 1 and 28 distinguish over Brace and Oxland and represent allowable subject matter.

*(3) Brace in view of U.S. Publication No. 2003/0187454 of Gill*

Claim 7 is rejected pursuant to 35 U.S.C. §103(a) as being obvious over Brace in view of U.S. Publication No. 2003/0187454 of Gill. The Examiner argues that Brace discloses a guide device as claimed, but admits that Brace fails to teach a protrusion that extends distally from the guide member. Thus, the Examiner relies on Gill to disclose a device having a protrusion, arguing that it would have been obvious to one having ordinary skill in the art to construct the device of Brace with the protrusion taught by Gill to have better orientation between the device and the plate in their attachment. Applicants respectfully disagree.

As discussed above, the device taught in Brace utilizes bushings (206, 208) to engage fastener holes in a bone plate in order to align the device with the plate. Thus, Brace already teaches a method of aligning the alignment device with a bone plate, and therefore no person having ordinary skill in the art would be motivated to modify Brace to include a protrusion as taught by Gill. Applicants further note

that the flange (79) disclosed by Gill is used to maintain a predetermined spatial relationship between the components of the prosthesis during implantation of the prosthesis. The flange (79) is not used for aligning the insertion tool with the prosthesis components. Brace does not have components that need to be aligned with one another, and thus there is no need for a flange as taught by Gill. It is also not possible to include a flange on the device of Brace, at least not without significantly modifying the device of Brace. The distal ends of the tubes merely engage the holes, and the remainder of the device is spaced apart from the plate. There is no location for a protrusion that could extend into a bore in the plate. Accordingly, no person having ordinary skill in the art would be motivated to modify Brace to include a protrusion as taught in Gill. Claim 7, therefore, distinguishes over Brace and Gill and represents allowable subject matter.

***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application..

Respectfully submitted,

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